IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 26 (MS) OF 2002

Vinod Kumar .....Petitioner.

Versus

Rent Control and Eviction Officer and others. ....Respondents.

HON'BLE RAJESH TANDON J.

Heard Sri Alok Singh, Senior Advocate, assisted by Lalit Tiwari, counsel for the petitioner and Sri V.K. Bisht assisted by Ms. Seema Sirohi, counsel for the respondents.

By the present Writ Petition, the petitioner has prayed for a writ of certiorari quashing the order dated 9th January, 2002 by which the vacancy has been declared.

Briefly stated, the present proceedings were started on the application of Sri Brijesh Kumar Pathak, respondent no. 2 for declaring the premises as vacant. On the application of the respondent no. 2, the petitioner has submitted that the vacancy proceedings were initiated behind his back and no opportunity was given to him. The premises in dispute is also not covered under the U.P. Act No. 13 of 1972 and the property is known as "Swami Atm Prakash Yati Charitable Trust, Bhim Goda, Haridwar and the same is registered under the Societies Registration Act, 1860 being Registration No. 829-1993-1994.

Petitioner has filed an application on 18th February, 2000 that premises is exempted under Section 2 (1) (bb) of U.P. Act No. 13 of 1972 and as such the proceedings under the U.P. Act No. 13 of 1972 for the vacancy can not be initiated in the premises in dispute.

Further the petitioner has submitted that he is residing in the property since long and the trust being the owner of the premises, he can not be evicted under the provisions of U.P. Act No. 13 of 1972. Rent Control and Eviction Officer has declared the vacancy

on 9th January, 2002, hence the Writ Petition has been filed. Both the parties have exchanged their pleadings.

Counsel for the petitioner has submitted that the property is a trust property as will appear from Annexure-3 to the Counter Affidavit, that one Mahant Mani Ram Chela of Mahant Pritam Das has formed a trust. It has been mentioned that the property situated at Bhim Goda Road, Haridwar has been given by his Guru Maharaj by virtue of a registered Will dated 31st July, 1969 and the property has been given to the Trust. He has mentioned as under:-

''मेरी इच्छा है कि मैं अपनी उपरोक्त चल व अचल सम्पत्ति का पूर्ण रूप जिसका मैं स्वामी हूँ का अपने जीवल काल में ऐसा प्रबन्ध कर दूं ताकि उक्त चल व अचल सम्पत्ति नश्ट न हो जाये। मैने अपनी इच्छा की पूर्ति के लिये स्वामी, आत्म प्रकाष यती चेला स्वामी बाल कृश्ण को इस योग्य समझा जिसे स्वामी आत्म प्रकाष स्वीकार किया अब मैं अपनी स्वस्थ इन्द्रिय तथा स्थिर बुध्दि की अवस्था में बिना किसी दबाव व आग्रह के साधू समाज के नियमों के अनुसार रस्म सादर करके स्वामी आत्म प्रकाष यती को अपना सादक चेला बना कर महन्त नियुक्त किया। अब प्रतिज्ञा करता हूं और लिख देता हूं कि आज से जो अधिकार मुझे आनन्द भवन व चल सम्पत्ति मे प्राप्त हैं वह सब अधिकार महन्त आत्म प्रकाष यती को प्राप्त हो गये हैं। वह जिस प्रकार चाहे उक्त चल व अचल सम्पत्ति को अपने अधिकार में रख कर उसका प्रबन्ध करे और हर प्राकर से लाभ उठाये। मेरा अन्य कोई चेला व चेली नहीं है।''

The petitioner has further pointed out the memorandum of the Association (Annexure 6 to the Writ Petition), where the property has been shown to be a charitable trust property. It shows like this:-

"Swami Atm Prakash Yati Charitable Trust Samiti Yati Dham, Bhim Goda, Haridwdar".

Paragraph 11 of the Niyamawali shows as under:-

''यह कि संस्था आय व्यय की किताबें रखेगी जैसे रखती आ रही है और मीटिंग रजिस्टर भी सुचारू रूप से लिखा जायेगा जैसा लिखा जा रहा है। प्रत्येक 31 मार्च का आय व्यय खाता व चिट्ठा तैयार किया जायेगा और उसे वार्शिक सभा की बैठक में प्रस्तुत किया जायेगा। संस्था निम्न किताबें बना रही है व बनाती रहेगी।

1– रोकड़ बही 2– खाता बही

3– मीटिंग रजिस्टर 4– स्टाक रजिस्टर
यह कि वर्श के अन्त में लेखा परीक्षक (चार्टर्ड एकाउन्टेन्ट) सारे हिसाब का निरीक्षण करेगा व उसकी रिपोर्ट तैयार करेगा जिसे साधारण सभा के सारे कानूनी काम काज का अधिकार अध्यक्ष के आदेशानुसार सचिव को होगा।
यह कि समय व आवश्यकतानुसार सदस्यों के बहुमत द्वारा संस्था के नियम में परिवर्तन, संशोधन वृद्धि की जा सकती है जो कि इस नियमावली का भाग समझा जायेगा।
अध्यक्ष के सभी अधिकार एवं स्वीकृति सुरक्षित रहेंगे।
यह कि सर्वप्रथम तो संस्था का कभी विघटन नहीं होगा और यदि विघटन होता है तो इसके लिये 3/4 बहुमत की आव यकता होगी।विघटन हेतु सभा बुलाने का नोटिस कम से कम एक माह पूर्व देना होगा व दि सोसाइटीज रजिस्ट्रेशन एक्ट, 1860 की धारा 13 व 14 के अनुसार ही संस्था के विघटन की कार्यवाही की जायेगी।
यद्यपि संस्था पूर्व से चली आ रही है, हम निम्न हस्ताक्षरित सदस्य संस्था को सोसाइटीज रजिस्ट्रेशन एक्ट 1860 मे अधीन रजिस्टर्ड कराना चाहते हैं और अपने हस्ताक्षर आज दिनांक 12 माह सन् 1993 को करते हैं।''

On 10th August, 1993 the trust was registered. It also shows Smiti Atm Prakash Yati Charitable Trust Registration Number as well as the name is also mentioned below:-

''अधिनियम संख्या 21,1860 के अधीन
संख्या 829 1993–1994

एतद्द्वारा प्रमाणित किया जाता है कि स्वामी आत्म प्रकाष यति चेरिटेबिल ट्रस्ट समिति, पता यति धाम, भीम गोडा, हरिद्वार जिला हरिद्वार को आज उत्तर प्रदेश में अपनी प्रवृत्ति के संबंध में यथासंषोधित सोसाइटीज रजिस्ट्रेषन अधिनियम 1860 ई0 के अधीन सम्यक रूप से रजिस्ट्रीकृत किया गया है।यह प्रमाणपत्र 26.07.1998 तक विधिमान्य होगा।

आज दिनांक 27.07 उन्नीस सौ 93 को मेरे हस्ताक्षर से दिया गया।''

Rent Control and Eviction officer has recorded a finding that it is a charitable trust but since the society was not registered after 26th July, 1998 and therefore, the Society in question has ceased to be the charitable society.

Section 2 (1) (bb) provides that in order to claim the exemption, the building should belong to or vested in a public charitable or public religious institution.

Section 2 (1) (bb) read as under:-

"2. Exemption from operation of Act. – (1) Nothing in this Act shall apply to (the following namely):-

(bb) any building belonging to or vested in a public charitable or public religious institution."

The Rent Control and Eviction Officer has not recorded any finding with regard to the fact as to whether the trust in question is a charitable trust or it is a public charitable trust.

The Niyamawali shows it is a charitable trust, the concept of word Public has been introduced by U.P. Act No. 13 of 1972 for the first time in the year, 1995, and therefore, the trust at the relevant time intended to create a public trust or private trust. It has to be ascertained from the intention of the testator, the Will as mentioned in the Trust Deed has to be proved.

The documents on the record fully establishes that it is a charitable trust but in order to claim the exemption from U.P. Act No. 13 of 1972, the court has to ascertain the intention of the testator as to whether it is meant for public trust or a private trust.

The Allahabad High Court has held in Lachman Deo Vs. D.J. Nainital and others, 2000 (2) A.R.C. Page, 32 as under:-

"4. The explanation added to the definition clause of "charitable purpose" is of winder amplitude. The word "charity" can be used in a restricted sense synonymous with relief of poverty, education and medical relief but in a wider sense it includes any activity by which the general public or any section thereof is benefited. The explanation covers both the aspects. Lord Macnaghten in his celebrated judgment in Commissioner of Income Tax v. John Fredrick Pemsel, (1891) AC 531 (574), laid down that charitable purpose which comes in the language or trade of statute of Elizabeth could be grouped under four heads; namely, (1) relief of poverty; (2) education; (3) advacement of religion; and (4) other purposes beneficial to the community not coming under any of the precedent headings.

5. Lord Russel, J. in Re Hummeltenberg, (1923) 1 Ch 237, commenting on the definition formulated by Lord Macnaghten observed "no matter under which the four classes of gift may

prima facie fall, it is still in my opinion necessary (in order to establish that it is charitable in the legal sense) to shows (1) that the gift will or may be operative for the public benefit, and (2) that the trust is one, the administration of which the Court itself could, if necessary, undertake and control."

6. The Court has to examine the object of any activity for which a charity is established. The object of any activity is a predominant factor to be predominant to find out as to whether the institution in a charitable or commercial. In P.C. Rajratnam Institution v. Municipal Corporation of Delhi and others, AIR 1990 SC 816, it was held that imparting education by a society can be held 'charitable purpose' and such society can be granted exemption under Section 115(4) (a) of Delhi Municipal Corporation Act as it imparts education and the fact that some of fee is charged from the students is also not decisive as to society has to incur expenditure for running institution and may further be supported either wholly or in part by voluntary contribution. In Municipal Corporation of Delhi v. Children Book Trust, AIR 1992 SC 1456. It was held that merely because education is imparted in the school, that by itself, cannot be regarded as charitable object. An element of public benefit or philanthropy has to be present. If education is imparted with a profit motive, it will not be a charitable purpose. The decisive factor is object of the institution. The same activity may be charitable if it is done for the welfare of public or a part thereof and if it is done with the motive to earn profit, it can not be termed as charitable. In Additional Commissioner of Income Tax v. Surat Art Silk Cloth Association, AIR 1980 SC 387, it was observed:

"Where an activity is carried on as a matter of advancement of the charitable purpose or for the purpose of carrying out the charitable purpose, it would not be incorrect to say as a matter of plain English Grammer that the charitable purpose involves the carrying on of such activity, but the predominant object of such

activity must be to subserve the charitable purpose and not to earn profit. The charitable purpose should not be submerged by the profit-making motive; the letter shold not masquerade under the guize of the former."

7. The plaintiff-respondent was registered as a society in the year 1988. It has branches all over India. The plaintiff has filed a booklet containing Gandhi Ashram Service Rules. The objects of the Ashram, according to its memorandum of Association, are to serve people of India by popularizing hand-spinning and hand woven cloth to ameliorate the condition of the people, especially in the rural areas by giving them medical help, training them to sanitary habits, imparting education to them in day and night schools, establishing libraries, museums, model farms, to raise necessary funds by means of donations and loans and by acquiring moveable properties and to accept and administer trusts.

8. The Manager of the Gandhi Ashram, Sheo Murti Misra, stated on oath that the entire income is spent on charitable purposes. The Ashram is also maintaining a Gaushala and it is also providing financial help. In various decisions rendered either by the Court or Tribunal it was held that the plaintiff-respondent is a charitable institution. In Civil Appeal No. 432 of 1975, Gandhi Ashram Vs. State of U.P., the 1st Additional Civil Judge, Nainital the plaintiff was held to be a charitable institution. The Labour Tribunal, Meerut held the plaintiff, Gandhi Ashram as a charitable institution because it did not reserve any profit for itself and it was supported either by donation or profit by sale which goes in charity. The Commissioner of Income Tax in its order dated 13.01.1995 held that the Gandhi Ashram is charitable institution. The plaintiff also filed several Government Orders wherein Gandhi Ashram has been exempted from octori, terminal, house tax, bonus, income and sales tax. It is contended in these cases, the petitioner was not a party and therefore, any

findings recorded in these judgments/orders are not conclusive and bindin on the petitioner. It may be that these judgments/orders will not operate as resjudicata against the petitioner but they are relevant documents and admissible under Section 13 of the Evidence Act to prove that the plaintiff was held in various decisions as public charitable institution. The petitioner, on the other hand, did not lead evidence to show that the object of the Gandhi Ashram is profit-making. The object for which it has been established is for welfare of the public at large. Its object is to serve the people of India by popularizing hand spun and hand woven cloth and other hand made products. It has to help the people in various ways. There is no element of profit-making in any of its activities. The Courts below rightly held that it is a public charitable institution.

9. Learned Counsel for the petitioner then contended that it may a charitable institution but it may be a private charitable institution. The distinction between public purpose and a purpose which is not a public purpose, depends upon as to who are to receive the benefit. If the object is that certain person or association of persons alone to get the profit from the activities of the institution then it is not a public purpose but if the benefit is to be given to the public or part of public, it is a public purpose. Tudor, in the 5th edition of his book 'Charities' (Page 12) summed up the principle in the following words:-

"If the intention of the donor is merely to benefit specific individuals the gift is not charitable, even though the motive of the gift may be to relieve their poverty or accomplish some other purpose with reference to those particular individuals which would be charitable if not so confined; on the other hand, if the donor's object is to accomplish the abstract purpose of relieving poverty, advancing education or religion or other purpose charitable within the meaning of the Statute of Elizabeth without

giving to any particular individuals the right to claim the funds, the gift is charitable."

10. In the case of Radha Kant Deb Vs. Commissioner of Hindu Religious Endowments AIR 1981 (2) Supreme Court Cases, Page 798, the Court has considered the line of distintion between private trust and public trust and public trust is the following words:-

"In other words, the beneficiaries in a public trust are the general public or a section of the same and not a determine body of individuals as a result of which the remedies for enforcement of charitable trust are somewhat different from those which can be availed of by beneficiaries in a private trust. The members of the public may not be debarred from entering the temple and worshipping the deity but their entry into the temple is not as of right. This is one of the cardinal tests of a private endowment."

In view of the aforesaid, the Rent Control and Eviction Officer shall consider as to whether the Trust in question is a public trust for the benefit of the general public or it is a private trust confined to the family of the donor.

Both the parties have submitted that they will submit the documents with regard to the Will in question. The parties are directed to adduce the evidence with regard to public charitable trust. The Rent Control and Eviction Officer is directed to decide the question as to whether the donor has intended to create a public charitable trust so as to get the exemption under Section 2 (1) (bb) of U.P. Act No. 13 of 1972.

Consequently, the Writ Petition is allowed. The matter is remanded back to the Rent Control and Eviction Officer for deciding afresh in the light of the observations made above.

(RAJESH TANDON J.)

11.10.2004
P.S. Rathour

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b))
Description of case

W.P. No. 26/02 (M/S)
Vinod Kumar

Vs.

R.C. Officer and others

Approved for reporting.

~~Not approved for reporting~~

Date of decision- 11.10.2004

Initial of Judge